

CITY OF SAN JOSE, CALIFORNIA Redevelopment Agency of the City of San Jose 50 W. San Fernando Street, Suite 1100 San Jose, California 95110 <div style="text-align: center;">STAFF REPORT</div>	Hearing Date/Agenda Number	
	P.C.: 6-12-02	Item:
	File Number: RCP01-10-009	
	Application Type: Conditional Use Permit	
	Council District: 3	
	Planning Area: Central	
	Assessors Parcel Number(s): 259-23-005	

PROJECT DESCRIPTION	Completed by: Judie Gilli
Location: 391 N. San Pedro Street	
Gross Acreage: .18	Net Acreage: N/A Net Density: N/A
Existing Zoning: CG	Existing Use: Vacant 2 story building. 7,750 square foot warehouse type structure
Proposed Zoning: No Change	Proposed Use: Entertainment Establishment, including restaurant, operating until 1:30 AM, Monday through Saturday; parking provided off-site

GENERAL PLAN	Completed by: JG
Land Use/Transportation Diagram Designation	Project Conformance:
General Commercial	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	<input checked="" type="checkbox"/> See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING	Completed by: JG
North: A(PD)	Union Pacific Railroad
East: LI Light Industrial	Parking Lot, Coleman Overpass
South: LI Light Industrial	Warehouses
West: LI Light Industrial	Warehouses

ENVIRONMENTAL STATUS	Completed by: JG
<input checked="" type="checkbox"/> Reuse of Downtown Supplemental EIR, Certified 04/27/99	<input type="checkbox"/> Exempt
<input type="checkbox"/> Environmental Impact Report complete on:	<input type="checkbox"/> Environmental Review Incomplete
<input type="checkbox"/> Negative Declaration circulated on :	<input type="checkbox"/> Negative Declaration adopted on:

FILE HISTORY	Completed by: JG
Annexation Title: Original City	Date:

HISTORIC STATUS: N/A	Completed by: JG
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REDEVELOPMENT AGENCY RECOMMENDATIONS AND ACTION		
<input type="checkbox"/> Approval	<input checked="" type="checkbox"/> Action	Approved by: _____ Date: _____
<input checked="" type="checkbox"/> Conditional Approval	<input type="checkbox"/> Recommendation	
<input type="checkbox"/> Denial		Approved by: _____ Date: _____
<input type="checkbox"/> Uphold Director's Decision		

APPLICANT	PROPERTY OWNER	
Jorge Sanchez 18 S. Almaden Ave. San Jose, CA 95113	Gary D. Veselka 199 Bassett Street San Jose, CA 95110	

PROJECT DESCRIPTION

The applicant, Jorge Sanchez, is requesting the subject Conditional Use Permit (CUP) to operate an entertainment establishment, Bassett Supper Club, consisting of an approximately 130-seat restaurant with alcohol service, musical entertainment and dancing at 391 N. San Pedro Street. The proposed hours of operation are 5:00 PM until 1:30 AM, Monday through Saturday. Parking for the project will be provided off-site, approximately three blocks to the south in an existing parking facility. The site is within the Julian Stockton Redevelopment Area and was recently rezoned to Commercial General (CG) from Light Industrial in order to accommodate a project such as this. This CUP also fulfills the requirements for a Special Use Permit for off-site parking in accordance with Municipal Code Section 20.90.200. A CUP is required for all entertainment establishments that serve alcohol and operate past midnight. The subject property is proposed to be developed, maintained and operated in conformance with the attached Development Plan, "Bassett Supper Club", dated 4-1-02, prepared by Del Campo & Maru. Exterior changes consist of adding additional windows to the south and east side of the building as well as door changes.

Project Site and Surrounding Area

The project site is located on the north-west corner of North San Pedro and Bassett Streets, 391 North San Pedro Street. The site is developed with a 7,750 square foot warehouse-type structure. Presently, the structure is vacant with a minor portion of the space used for storage. The proposed project includes re-using approximately 6,500 square feet of the existing space: 1,300 square feet for the 48-seat dining area; 1,300 square feet for additional seating and alcohol service and 400 square feet for the dance area. The remaining 3,500 square feet of the floor area is occupied by the kitchen, restrooms and storage. An additional 1,250 square feet of existing space, located in the south east corner of the project site will be used by the property owner and is not a part of the proposed entertainment facility. This area is separated from the proposed facility with separate access to the exterior and cannot be used by the facility without amending the subject CUP.

The project site is surrounded primarily by industrial use. Directly to the north of the site is a vacant lot which abuts a Union Pacific Railroad line. Warehouses are located to the south and west. A surface parking lot and Coleman overpass is located east of the site.

GENERAL PLAN CONFORMANCE

The project site is designated General Commercial by the San Jose 2020 General Plan Land Use/Transportation Diagram in that the proposed use is a commercial use allowed by this designation.

ENVIRONMENTAL REVIEW

Environmental Clearance has been granted for this project through the Final Supplemental Environmental Impact Report (SEIR) entitled "San Jose Downtown Strategy Plan," adopted by City Council Resolution No. 68839 on April 27, 1999.

ANALYSIS

The issues associated this CUP request are as follows:

Consistency with Council Policies Regarding Nightclubs and Bars and 24-Hour Uses

The applicant proposes to operate an entertainment establishment, with alcohol service, until 1:30 AM, Monday through Saturday. Such uses are subject to the City Council 24-hour Use Policy and Guidelines for the Evaluation of Nightclubs and Bars. These policies were established to ensure that late night and early morning uses, particularly nightclubs and bars, are compatible with surrounding land uses. The key provision of these policies is to ensure that entertainment and after-midnight uses not be approved unless the facilities can operate without detriment to nearby residential uses and general welfare of the surrounding area.

After Midnight Use

The proposed Bassett Supper Club will operate no later than 1:30 AM Monday through Saturday, which is consistent with the provisions of the City Council 24-hour Use Policy and Guidelines for Evaluation of Nightclubs and Bars. Since there are no residential or other sensitive uses near the site, the project will be able to operate without detriment to uses in the vicinity. The adjacent warehouses will likely continue to operate only during the daytime hours. The Bassett Supper Club will open at 5:00 PM and close by 1:30 AM, the hours of operation of the proposed project and surround businesses will, therefore, have little overlap.

Land Use Compatibility

As indicated above, the proposed use is compatible with the surrounding land uses. The adjacent warehouses and surface parking lot should not be affected by the proposed project operation due the offset in hours of operation and the nature of both businesses.

Parking

Based on the parking requirements in Chapter 20.90 for off-street parking, 63 parking spaces are required for the proposed project. The calculation of the requirement is based on one space per 40 square feet of floor area open to the public for entertainment use. The required parking will be provided by an off-site surface parking located on the corner of San Pedro, St. James and Terraine Streets (San Pedro Lot), approximately three blocks south of the project site. Off-site parking arrangements are typically permitted with a Special Use Permit, issued in accordance with Chapter 20.90.200, however, since the proposed project requires a CUP, staff has included off-site parking findings in the subject CUP. The following findings must be made in order for the Director to recommend approval for off-site parking:

1. The number of off-street parking provided in such facilities adequately meets the requirements of the individual buildings and uses as specified in Chapter 20.90 of this Title. The applicant has entered into a sub-lease with Ampco System Parking to use 63 parking spaces on the San Pedro Lot between 5:00 PM to 1:30 AM, Monday through Saturday. The hours of operation for the proposed project are directly linked to the availability of parking. Therefore, the hours of operation and hours of available parking are one in the same.
2. It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required,

during the life of the building or use. Ampco Parking System is an established parking facility that provides parking for businesses and patrons in the Downtown Area. The Code does not establish a minimum period for which off-site parking must be maintained. However, the Code does require that the parking be available for the duration of the use. Although Ampco Parking has not entered into a long-term lease with the applicant, Ampco is an established company that provides parking for Downtown businesses. The Conditions of Approval contain a provision that would require termination of the use if parking is no longer available. It is likely that Ampco will continue to provide 63 parking spaces for the duration of the proposed use. . The Conditions of Approval contain a provision that would require termination of the use if the parking is no longer available. Should the parking facility cease to exist or the sub-lease expire, the applicant will have to obtain alternative parking or be in violation of the CUP.

3. The parking facility is reasonably convenient and accessible to the buildings or uses to be served. Ampco Parking Lot is located three blocks away from the project site with continuous pedestrian access along San Pedro Street.

FACTS

Staff recommends that the Planning Commission review the requested Conditional Use Permit and include the following facts, findings and conditions in its Resolution:

The Planning Commission determines that the following are the relevant facts regarding the proposed project:

1. The 0.18-acre project site is located at 391 North San Pedro Street in the Commercial General (CG) Zoning District.
2. The project site is designated in the General Commercial on the San Jose 2020 General Plan Land Use/Transportation Diagram.
3. This is a Conditional Use Permit application for an entertainment establishment, with alcohol service, and restaurant and from 5:00 PM to 1:30 AM, Monday through Saturday.
4. Restaurants (dining establishments) are a permitted use in the CG Zoning District.
5. The San Jose Municipal Code requires that all commercial uses, excluding office uses, operating between the hours of 12:00 midnight and 6:00 AM obtain a Conditional Use Permit.
6. The environmental impacts of this project were addressed by Final SEIR entitled, "Downtown Strategy Plan" and adopted by City Council Resolution No. 68839 on April 27, 1999.
7. Based on the parking requirements for off-street parking, Chapter 20.90, one space per 40 square feet of floor area open to the public for entertainment use is required.

8. 63 parking spaces are provided for the proposed use at a parking facility located on the corner of San Pedro, St. James and Terraine Streets (San Pedro Lot), approximately three blocks south of the project site.
9. Exterior changes consist of adding additional windows to the south and east side of the building as well as door changes.

RECOMMENDATION

Subject to testimony provided at the public hearing, it is recommended that the Planning Commission consider the following actions and approve the project subject to the conditions stated below.

Based on the above-stated analysis and subject to the conditions set forth below, the Planning Commission finds that:

1. **The proposed use at the location will not:**
 - a. **Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area** because there are no residential uses in the vicinity and the hours of the nearby commercial uses will generally not overlap with the hours of the proposed use. Consequently, the proposed eating, entertainment and drinking establishment uses are consistent with the commercial uses of the surrounding area; or
 - b. **Impair the utility or value of property of other persons located in the vicinity of the site** because the proposed restaurant and drinking establishment is consistent with surrounding uses and compatible with surrounding character and will not alter or diminish the value of adjacent restaurants or businesses, raise new safety concerns, or create visual impacts; or
 - c. **Be detrimental to public health, safety or general welfare** the potential environmental impacts of the project were addressed by the final supplemental environmental impact report entitled, "Downtown Strategy Plan EIR" (Resolution No. 68839); and
2. **The proposed site is adequate in size and shape to accommodate the development features necessary to integrate said use with the uses in the surrounding area** because the project site includes the improvements needed for the proposed uses which are compatible with the uses in the surrounding area; and
3. **The proposed site is adequately served:**
 - a) **By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate** in that the proposed project will provide the required offsite improvements to the existing roadway network or transit facilities; and
 - b) **By other public or private service facilities as are required** in that the scale of the project will not necessitate expansion of existing service facilities.

This Planning Commission concludes and finds, based on an analysis of the above facts, that:

1. Upon issuance of this Conditional Use Permit, the proposed use will comply with the Zoning Ordinance in that the operation of a bar or nightclub after midnight requires the approval of a Conditional Use Permit.
2. The proposed project conforms to the General Commercial land use designation in the San Jose 2020 General Plan.
3. This project is consistent with the City Council 24-hour Use and Bar and Nightclub Policies for the operation of a bar/nightclub after midnight given its location away from sensitive uses and overall compatibility with adjacent uses.
4. This property is well suited for the proposed subject activities due to its location near the Downtown Core. Based on its location and conditions of approval, the project will not adversely impact the general welfare of the surrounding area.
5. The project is in conformance with the California Environmental Quality Act in that it will not generate additional impacts beyond those addressed in the Downtown EIR.
6. The proposed use complies with the parking requirements as stated in the Off-Street Parking Requirements, Chapter 20.90, by providing 63 parking spaces on an off-site parking facility located on the corner of San Pedro, St. James and Terraine Streets (San Pedro Lot).

This Planning Commission further concludes and finds, in accordance with Zoning Ordinance Section 20.90.200, regarding the required findings for OFF-site, Alternating Use and Alternative Parking Arrangements, that:

1. The number of off-street parking provided in such facilities adequately meets the requirements of the individual buildings and uses as specified in Chapter 20.90 of this Title. The applicant has entered into a sub-lease with Ampco System Parking to sublease 63 parking spaces on the San Pedro Lot during the of 5:00 PM to 1:30 AM, Monday through Saturday. The hours of operation for the proposed project is directly linked to the availability of parking. Therefore, the hours of operation and hours of available parking are one in the same.
2. It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the building or use. Ampco Parking System is an established parking facility that provides parking for businesses and patrons in the Downtown Area. The Code does not establish a minimum period for which off-site parking must be maintained. However, the Code does require that the parking be available for the duration of the use. Although Ampco Parking has not entered into a long term lease with the applicant, Ampco is an established company that provides parking for Downtown businesses. The Conditions of Approval contain a provision that would require termination of the use if the parking is no longer available. It is likely that Ampco will continue to provide 63 parking spaces for the duration of the proposed use. . The Conditions of Approval contain a provision that would require termination of the use if the parking is no longer available.

Should the parking facility cease to exist or the sub-lease expire, the applicant will have to obtain alternative parking or be in violation of the CUP.

3. The parking facility is reasonable convenient and accessible to the buildings or uses to be served. Ampco Parking Lot is located three blocks away from the project site with continuous pedestrian access along San Pedro Street.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions. Each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below enumerated precedent conditions all have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. Acceptance and Payment of Recording Fees. Within sixty (60) days from the date of this Resolution, the property owner(s) shall accept this permit by signing the form provided hereto, and paying the fee for its recordation by the Recorder of the County of Santa Clara.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below enumerated conditions throughout the life of the permit:

1. Water Pollution Control Plant Notice. This Conditional Use Permit is subject to the operation of Part 2.75 of the Chapter 15.12 of Title 15 of the San Jose Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San Jose or to meet the discharge standards of the sanitary sewer system imposed on the California Regional Water Quality Control Board for the San Francisco Bay Region.
2. Nuisance. This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City or the Redevelopment Agency.
3. Development Plans. The subject property shall be developed, maintained and operated in conformance with the Development Plan, "Bassett Supper Club", dated 4-1-02, prepared by Del Campo & Maru.

4. Signs. Signs are not included as part of this Conditional Use Permit. Any proposed signage will require approval by the Executive Director of the Redevelopment Agency.
5. Hours of Operation. The restaurant and entertainment establishment shall be limited in operation from 5:00 PM to 1:30 AM, Monday through Saturday.
6. Security. A minimum of two security officers shall be on duty for every 100 patrons using the bar facility during its hours of operation.
7. Noise and Acoustics.
 - a. During the hours of operation, amplified sound shall be carefully regulated to ensure compatibility with adjacent uses.
 - b. Windows and doors for the facility shall remain shut, during periods in which amplified music is played, to insure compatibility with the surrounding neighborhood and conformance with General Plan noise policies.
8. Trash, Refuse, Garbage and Litter.
 - a. Outdoor cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall further include daily damp-washing of all exterior walls and sidewalks along the project's frontage on North San Pedro and Bassett Streets.
 - b. Mechanical equipment used for outside maintenance, including blowers and street-sweepers shall not be used between 10:00 PM and 6:00 AM, seven days a week.
 - c. All trash areas, equipment, and containers shall be effectively screened from view and maintained in an orderly state at all times.
 - d. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the project frontages.
9. Patron Parking. The project operator shall identify and publicize to its patrons the location and availability of the parking facility located on the corner of San Pedro, St. James and Terraine Streets (San Pedro Lot).
10. Vendor Delivery Parking. The project operator shall discourage from parking delivery vehicles illegally on City streets and shall identify to vendors the available legal loading and unloading zones along West San Salvador.
11. ABC License. The project operator shall obtain the appropriate permit, based on the use of the facility from the State of California Department of Alcoholic Beverages Control (ABC) and shall maintain that license according to the use operated.

12. Entertainment Permit. The project operator shall obtain and maintain the appropriate Entertainment Permit issued by the City of San Jose Police Department.
13. Radio Promotions Vehicles. The project operator shall discourage radio promotion vehicles or any other vehicles from parking illegally on City streets or sidewalks.
14. Fire Conditions: The applicant shall meet all conditions and regulations required by the Fire Department.
15. Public Works Conditions:

Fees: In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.

Landscape: Install street trees within public right of way long entire street frontage per City Standards.

Sanitary: Install new sanitary sewer lateral if necessary.

Street Improvements: Applicant shall be responsible to remove and replace curb, gutter and sidewalk damage during construction of the proposed project. A 4'-6" sidewalk with curb is required along the project's frontage; North San Pedro and Bassett Streets.

Minor Improvement Permit: The applicant will be required to satisfy all Public Works conditions prior to the issuance of a Public Works Clearance. The clearance may require the execution of a Minor Street Improvement Permit that guarantees the completion of the public works improvements to the satisfaction of the Director of Public Works. This permit includes plans, insurance, bonds/deposit certificate, and engineering and inspection fees.

CONDITIONS SUBSEQUENT

1. Building Permit. If this Conditional Use Permit includes construction of any buildings or structures, said Permit shall expire and be of no further force or effect if the construction of buildings or structures pursuant to a valid Building Permit has not commenced within two (2) years from the date of the adoption of this Resolution. No further Building Permit shall be issued after expiration of the Conditional Use Permit pursuant to this condition or to a time limit condition. However, nothing herein shall be deemed to prevent the renewal or resistance of any Building Permit, which expires by its own terms prior to the expiration of this Permit.
2. Revocation, Suspension, Modification. This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission or by the City Council on appeal, at any time, regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Chapter 20.100.350, of Title 20, of the San Jose Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or

- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use presently conducted creates a nuisance.
3. **Time Limit.** This Conditional Use Permit expires and has not further force or effect five (5) years from the date of approval. This permit may be renewed in accordance with condition number five, below. Please note that this conditional use permit has been granted for a period of 5 year(s) only. You are being specifically and separately advised of this time limitation so that you will consider this time limitation in your decision to accept this permit or as you make any investment decision related to this property.
4. **Compliance Review.** A Compliance Hearing may be required at the discretion the Planning Commission at any time during the period of time this permit is in effect.
5. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Executive Director of the Redevelopment Agency. In order to be timely, an application for renewal must be filed more than ninety (90) calendar days but less than one hundred eighty (180) calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.